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7
8

9 IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

10 STATE OF OREGON, ex rel.,)
11 HARDY MYERS,)
Attorney General)
12)
13 STATE OF WASHINGTON, ex rel.,)
Attorney General)
CHRISTINE O. GREGOIRE,)
14)
15 STATE OF CALIFORNIA, ex rel.,)
Attorney General DANIEL LUNGREN)
16 UNITED STATES OF AMERICA,)
17 Plaintiffs,)
18 v.)
19 JEFF MULKEY, JERRY HAMPEL,)
TODD WHALEY, BRAD PETTINGER,)
20 JOSEPH SPEIR, THOMAS TIMMER,)
RICHARD SHELDON,)
21 DENNIS STURGELL, ALLEN GANN)
and RUSSELL SMOTHERMAN,)
22 Defendants.)

CIVIL ACTION
NO. 97-234MA

COMPLAINT - Antitrust

Filed: February 11, 1997

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COPY

I.

SUMMARY OF COMPLAINT

Plaintiffs, UNITED STATES OF AMERICA and the STATES OF OREGON, WASHINGTON, AND CALIFORNIA, bring this action in their sovereign capacities, and the plaintiff states as parens patriae, against Defendants to secure injunctive relief and civil penalties for Defendants' violations of the antitrust laws of the United States and the antitrust laws of the Plaintiff States. Plaintiffs allege that Defendants and other commercial seafood fishermen (as defined herein), who directly compete with each other:

a. Entered into and carried out agreements which had the purpose and effect of fixing the price at which crab harvested from the Pacific Ocean was to be sold to purchasers in Oregon, California and Washington;

b. Entered into and carried out agreements which had the purpose and effect of restraining price competition among competing commercial seafood fishermen who sell crab harvested from the Pacific Ocean to purchasers in Oregon, California and Washington;

c. Organized, entered into and participated in a group boycott by refusing to fish for and supply crab to processors until all processors accepted the price agreed upon by the fishermen, in an effort to facilitate the success of the price fixing agreement;

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1 d. Were not members of any fishermen's marketing
2 association (as defined herein) and/or conspired with competing
3 commercial seafood fishermen who were not members of any
4 fishermen's marketing association; and

5 e. Certain of the defendants and other fishermen used
6 and/or relied on threats, intimidation, and coercion against
7 other competing commercial seafood fishermen to facilitate the
8 success of the price fixing agreement and the group boycott.

9 II.

10 JURISDICTION AND VENUE

11 1. This complaint is filed and the jurisdiction and venue
12 of the Court are invoked under the provisions of 28 U.S.C.
13 §§ 1331 and 1337, 15 U.S.C. § 26, and 15 U.S.C. § 4 to prevent
14 and restrain a continuing restraint of trade by defendants in
15 violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

16 2. Venue is proper in this judicial district because the
17 Defendants are found, reside, and/or do business within the
18 District of Oregon within the meaning of 28 U.S.C. § 1391(b) and
19 (c), and because many of the acts alleged herein occurred in this
20 judicial district.

21 3. This Complaint also alleges violations of the following
22 state antitrust laws and seeks both injunctive relief and civil
23 penalties based on these claims under the following laws:
24 California Commercial & Business Code § 16720, et seq.; Oregon
25 Revised Statutes 646.705, et seq.; Revised Code of Washington
26 § 19.86, et seq.

1 4. This Court has pendent jurisdiction over the claims
2 based upon State laws. 28 U.S.C. § 1367(a). All claims under
3 federal and state law are based upon a common nucleus of facts
4 and series of events such that the entire action commenced by
5 this Complaint constitutes a single case which would ordinarily
6 be tried in one judicial proceeding. Pendent jurisdiction would
7 avoid unnecessary duplication and multiplicity of actions, and
8 should be exercised in the interests of judicial economy,
9 convenience, and fairness.

III.

DEFINITIONS

5. As used herein:

a. "Commercial Seafood Fishermen" means fishermen who fish for and catch seafood products, including crab and crab products, and sell such products to purchasers.

b. "Crab" and "Crab Products" mean crab, crab meat, and any and all other crab products, whether fresh, raw, cooked, frozen, canned, or otherwise preserved or prepared for consumption.

c. "Ex-vessel Price" means the price paid by purchasers to fishermen for seafood.

d. "Fishermens' Association" means any group of fishermen organized under the Fisherman's Collective Marketing Act, 15 U.S.C. § 521 or under the companion laws of the states of California, Oregon, and/or Washington.

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1 e. "Person" means any individual, sole proprietorship,
2 partnership, firm, corporation, or any other legal or business
3 entity.

4 f. "Purchasers" means commercial seafood processors,
5 commercial seafood canneries, retail stores and/or restaurants.

6 IV.

7 PLAINTIFFS

8 6. The United of America by and through its attorneys,
9 acting under the direction of the Attorney General of the United
10 States, and the States of California, Oregon, and Washington, by
11 and through their Attorneys General, bring this civil action in
12 their sovereign capacities, and the plaintiff states as parens
13 patriae, to enforce federal and state antitrust laws that
14 Defendants have violated.

15 V.

16 DEFENDANTS

17 7. Defendants are commercial seafood fishermen residing in
18 and/or doing business within the District of Oregon.

19 VI.

20 UNNAMED CO-CONSPIRATORS

21 8. The unnamed co-conspirators are various other
22 commercial seafood fishermen residing in and doing business in
23 California, Oregon and Washington, who are known and unknown to
24 Plaintiffs and not named as Defendants herein, who compete with
25 Defendants for the sale of crab to purchasers, who participated
26 as co-conspirators with Defendants in the violations alleged

1 in this Complaint, and who performed acts and statements in
2 furtherance thereof.

3 VII.

4 TRADE AND COMMERCE

5 9. Defendants and unnamed co-conspirators harvest crab
6 from the Pacific Ocean and sell that crab to purchasers in the
7 major fishing ports in California, Oregon, and Washington.

8 10. The activities of Defendants and unnamed co-
9 conspirators in selling crab were in the regular, continuous, and
10 substantial flow of interstate commerce, and have had a
11 substantial effect upon interstate commerce. Each year
12 Defendants and unnamed co-conspirators sell in excess of ten
13 million dollars of crab in California, Oregon and Washington.

14 11. The activities of Defendants and unnamed co-
15 conspirators in selling crab were in the regular, continuous, and
16 substantial flow of trade and commerce within each of the
17 Plaintiff States.

18 VIII.

19 FIRST CLAIM FOR RELIEF

20 12. Beginning on a date uncertain, but as early as
21 December 1, 1995 and continuing into January 1996, Defendants and
22 unnamed co-conspirators entered into a combination and conspiracy
23 to fix and stabilize the price of crab to be sold to purchasers.

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1 13. This combination and conspiracy consisted of a
2 continuing agreement among Defendants and unnamed co-conspirators
3 to sell the crab they harvested from the Pacific Ocean to
4 purchasers in the major fishing ports in California, Oregon and
5 Washington at an ex-vessel price of not less than \$1.25 per
6 pound.

7 14. This combination and conspiracy was entered into,
8 implemented, facilitated and monitored through a series of
9 meetings among commercial seafood fishermen, including
10 Defendants, during the months of November and December 1995. The
11 meetings took place in fishing ports including, but not limited
12 to, the ports of Ilwaco, Washington; Westport, Washington;
13 Astoria/Warrenton, Oregon; Newport, Oregon; South Beach, Oregon;
14 Charleston, Oregon; Brookings, Oregon; Crescent City, California;
15 and Eureka, California.

16 15. The combination and conspiracy was also implemented,
17 facilitated and monitored by a series of telephone calls among
18 commercial seafood fishermen, including Defendants, located in
19 California, Oregon and Washington. The telephone calls took place
20 during November and December 1995 and January 1996.

21 16. Defendants and other co-conspirators attended, led,
22 and/or participated in the port meetings and telephone calls
23 among commercial seafood fishermen.

24 17. As a direct result of these meetings and telephone
25 calls, an agreement was reached among Defendants and unnamed co-
26 conspirators that they would negotiate for and accept no less

1 than a minimum ex-vessel price of a \$1.25 per pound for the sale
2 of their crab to purchasers.

3 18. As a direct result of these meetings and telephone
4 calls, an agreement was reached among Defendants and unnamed co-
5 conspirators that the \$1.25 per pound minimum ex-vessel price
6 would be the minimum price for all crab sold in all major fishing
7 ports in Oregon, California and Washington at the beginning of
8 the 1995-1996 season.

9 19. As a direct result of these meetings and telephone
10 calls, Defendants and unnamed co-conspirators implemented
11 monitored and reinforced the coastwide \$1.25 per pound ex-vessel
12 price agreement.

13 20. Certain defendants and unnamed co-conspirators used
14 and/or relied upon threats, intimidation and/or coercion against
15 competing commercial seafood fishermen to enforce the coastwide
16 \$1.25 per pound ex-vessel price agreement.

17 21. At all times relevant herein, Defendants Jeff Mulkey,
18 Jerry Hampel, Todd Whaley, Joseph Speir, Brad Pettinger, Allen
19 Gann, Dennis Sturgell and Russell Smotherman and many of the
20 unnamed co-conspirators were not members of a fishermen's
21 association established and used and for the purpose of
22 harvesting, marketing, or selling of crab.

23 22. The port meetings and telephone calls and contacts used
24 to facilitate the \$1.25 per pound ex-vessel price agreement
25 involved commercial seafood fishermen who were not members of any
26 fishermen's association established and used for the purpose of

1 harvesting, marketing or selling crab; and, furthermore, the
2 meetings, telephone calls and/or contacts were not arranged,
3 held, or otherwise facilitated by such an association.

4 23. The aforementioned practices by Defendants constituted
5 a price-fixing agreement in restraint of trade and in violation
6 of Section 1 of the Sherman Act, 15 U.S.C. § 1.

7 IX.

8 SECOND CLAIM FOR RELIEF

9 24. Plaintiffs repeat and reallege each and every
10 allegation contained in paragraphs 12-22 with the same force and
11 effect as if set forth fully herein.

12 25. An agreement was reached among Defendants and unnamed
13 co-conspirators to engage in a group boycott, known in the
14 commercial seafood industry as a "tie-up", in which they refused
15 to fish for crab until all commercial seafood fishermen in every
16 major California, Oregon and Washington fishing port were offered
17 an ex-vessel price of at least \$1.25 per pound for their crab.

18 26. Defendants and other co-conspirators used port meetings
19 and engaged in conversations over the telephone and in person
20 with other commercial seafood fishermen to:

21 A. Determine the level of commitment commercial
22 seafood fishermen in each port had in supporting the
23 minimum coastwide ex-vessel price of \$1.25 per pound;

24 B. Determine the level of commitment commercial
25 seafood fishermen in each port had in refusing to fish
26 for crab until the \$1.25 per pound ex-vessel price was

1 achieved; and

2 C. To reinforce the commitment among commercial
3 seafood fishermen in each port to comply with the \$1.25
4 per pound ex-vessel price agreement.

5 27. The port meetings and telephone calls and contacts used
6 to facilitate the group boycott agreement, involved commercial
7 seafood fishermen who were not members of any association
8 established and used for the purpose of harvesting, marketing or
9 selling crab; and, furthermore, the meetings, telephone calls
10 and/or contacts were not arranged, held, or otherwise facilitated
11 by such an association.

12 28. In order to facilitate the success of and adherence to
13 the tie-up, certain Defendants and other unnamed co-conspirators
14 used and/or relied upon threats, intimidation and/or coercion
15 against competing commercial fishermen who fished for crab during
16 December 1995 or were about to begin fishing for crab during
17 December while the tie-up was still in effect.

18 29. The purpose and effect of the threats, intimidation and
19 coercion was to minimize the number of commercial seafood
20 fishermen fishing for crab during the tie-up and to put pressure
21 on purchasers of seafood in the major fishing ports to agree to
22 pay a coastwide ex-vessel price for crab of \$1.25 per pound.

23 30. As a direct result of the efforts employed by
24 Defendants and other unnamed co-conspirators to facilitate the
25 success of the tie-up, commercial seafood fishermen who received
26 ex-vessel price offers above, at or below \$1.25 per pound for

1 their crab catch, did not fish for crab and/or discontinued their
2 fishing for crab in December of 1995.

3 31. As a direct result of the agreement to tie-up boats and
4 the efforts employed by Defendants and other unnamed co-
5 conspirators to facilitate the success of the tie-up, the vast
6 majority of commercial seafood fishermen did not fish for crab
7 for the majority of December 1995.

8 32. Acts and practices of the type alleged in paragraphs 24
9 through 31 have taken place in recent years in Oregon, California
10 and Washington prior to and/or at the beginning of commercial
11 crab seasons.

12 33. The aforementioned practices by Defendants constituted
13 a group boycott agreement in restraint of trade in violation of
14 Section 1 of the Sherman Act, 15 U.S.C. § 1.

15 X.

16 THIRD CLAIM FOR RELIEF

17 33. Plaintiff State of Oregon repeats and realleges each
18 and every allegation contained in paragraphs 12-22 with the same
19 force and effect as if set forth in full herein.

20 34. The aforementioned practices by Defendants constituted
21 a price-fixing agreement in violation of ORS 646.725.

22 XI.

23 FOURTH CLAIM FOR RELIEF

24 35. Plaintiff State of Oregon repeats and realleges each
25 and every allegation contained in paragraphs 24-32 with the same
26 force and effect as if set forth in full herein.

1 36. The aforementioned practices by Defendants constituted
2 a group boycott agreement in violation of ORS 646.725.

3 XII.

4 FIFTH CLAIM FOR RELIEF

5 37. Plaintiff State of California repeats and realleges
6 each and every allegation contained in paragraphs 12-22 with the
7 same force and effect as if set forth in full herein.

8 38. The aforementioned practices by Defendants constituted
9 a price-fixing agreement in violation of Ca. Prof. & Bus. Code
10 §§ 16720-16770.

11 XIII.

12 SIXTH CLAIM FOR RELIEF

13 39. Plaintiff State of California repeats and realleges
14 each and every allegation contained in paragraphs 24-32 with the
15 same force and effect as if set forth in full herein.

16 40. The aforementioned practices by Defendants constituted
17 a group boycott agreement in violation of Ca. Prof. & Bus. Code
18 §§ 16720-16770.

19 XIV.

20 SEVENTH CLAIM FOR RELIEF

21 41. Plaintiff State of Washington repeats and realleges
22 each and every allegation contained in paragraphs 12-22 with the
23 same force and effect as if set forth in full herein.

24 42. The aforementioned practices by Defendants constituted
25 a price-fixing agreement in violation of RCW § 19.86.030.

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1 XV.

2 EIGHTH CLAIM FOR RELIEF

3 43. Plaintiff State of Washington repeats and realleges
4 each and every allegation contained in paragraphs 24-32 with the
5 same force and effect as if set forth in full herein.

6 44. The aforementioned practices by Defendants constituted
7 a group boycott agreement in violation of RCW § 19.86.030.

8 XVI.

9 EFFECTS

10 45. The aforementioned unlawful practices had the following
11 effects:

12 a. Price competition among commercial fishermen was
13 restrained;

14 b. Fishermen were threatened, intimidated and/or coerced
15 into participating in the aforementioned practices and, as a
16 result, had their pricing independence unlawfully restricted and
17 curtailed;

18 c. Purchasers and consumers of crab in each of the
19 Plaintiff States were denied the benefits of unfettered and open
20 competition among commercial fishermen; and

21 d. The amount of seafood sold to purchasers and resold to
22 consumers was restricted.

23 XVII.

24 INJURY

25 46. As a result of these illegal combinations and
26 conspiracies alleged above:

1 a. The Plaintiff states sustained injury to the general
2 welfare and economy of their respective states.

3 b. The Plaintiff States will be subject to a continuing
4 threat of injury to their general welfare and economy unless
5 Defendants are enjoined from illegal conduct.

6 c. Purchasers and consumers of seafood residing in the
7 Plaintiff states sustained injury to their property.

8 d. Purchasers, and consumers of seafood residing in the
9 Plaintiff States are threatened with further injury to their
10 property unless Defendants are enjoined from illegal conduct.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiffs pray that the Court:

13 a. Adjudge and decree that Defendants and co-conspirators
14 entered into an unlawful combination and conspiracy in
15 unreasonable restraint of interstate trade in violation of
16 Section 1 of the Sherman Act, 15 U.S.C. § 1;

17 b. Adjudge and decree that Defendants and co-conspirators
18 entered into an unlawful combination and conspiracy in
19 unreasonable restraint of California, Oregon and Washington trade
20 and commerce in violation of the laws of California [Ca. Prof. &
21 Bus. Code §§ 16720-16770]; Oregon [ORS 646.725]; and Washington
22 [RCW § 19.86.030].

23 c. Enjoin and restrain Defendants, their employees, and
24 all other persons acting in concert with them, from engaging in
25 the unlawful practices described in this Complaint and from
26 engaging in any similar unlawful practices;

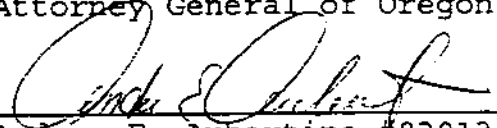
1 d. Enter judgment against Defendants for civil penalties
2 in an amount to be determined by the court to be just and proper,
3 as authorized under Ca. Prof. & Bus. Code § 17200 et seq.,
4 ORS 646.760; and RCW § 19.86.080 and RCW § 19.86.090;

5 e. Award each Plaintiff State the cost of suit, including
6 reasonable attorney's fees and reasonable investigative costs;
7 and

8 f. Grant such other and further relief as the case may
9 require and the Court may deem just and proper under the
10 circumstances.

11 Dated this 7th day of February, 1997

12 HARDY MYERS
13 Attorney General of Oregon

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15 Andrew E. Aubertine #83013
16 Assistant Attorney General
17 Oregon Department of Justice
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1 d. Enter judgement against Defendants for civil penalties
2 in an amount to be determined by the court to be just and proper,
3 as authorized under Ca. Prof. & Bus. Code § 17200 et seq.,
4 ORS 646.760; and RCW § 19.86.080 and RCW § 19.86.090;

5 e. Award each Plaintiff State the cost of suit, including
6 reasonable attorney's fees and reasonable investigative costs;
7 and

8 f. Grant such other and further relief as the case may
9 require and the Court may deem just and proper under the
10 circumstances.

11 Dated this _____ day of December, 1996

12 THEODORE KULONGOSKI
13 Attorney General of Oregon

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15 Andrew E. Aubertine #83013
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21 Dated this 14 day of January, 1997 (LB)
22 ~~December, 1996~~

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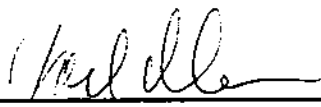
1 Dated this 27th day of January, 1997

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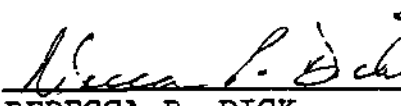
1 Dated this 6th day of February, 1997

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